SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0302-20

D.R. and A.R.[1],

Plaintiffs-Respondents,

v.

K.A. and G.A.,

Defendants-Appellants.

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Argued October 14, 2021 – Decided April 25, 2022

Before Judges Currier and Smith.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No. FD-02-0179-16.

Jessica C. Diamond argued the cause for appellants (Fox Rothschild, LLP, attorneys; Sandra C. Fava, of counsel and on the briefs; Jessica C. Diamond and Marissa Koblitz Kingman, on the briefs).

Jodi Argentino argued the cause for respondents (Argentino Fiore Law & Advocacy, LLC, attorneys;

[1] We use initials for the parties and child to protect their privacy and to preserve confidential records pursuant to R. 1:38-3(D)(12).

Celeste Fiore, of counsel and on the brief; Christina Salvia and Jodi Argentino, on the brief).

PER CURIAM

Defendants K.A. and G.A. had a child together, L.A.R.. In October 2012, defendants and their one-year-old child moved out of K.A.'s parent's home and moved in with plaintiffs, D.R. and A.R., a couple whom defendants had befriended months earlier. After a week, plaintiffs asked K.A. to leave but offered to allow G.A. and the child to stay. Instead, both defendants left, leaving the child with plaintiffs. In an ensuing investigation, defendants informed the Department of Child Protection and Permanency (Department) that they were transferring custody of their child to plaintiffs. In a notarized letter, defendants gave plaintiffs custodial rights subject to final adoption. After this transfer of temporary custody, the Department closed the investigation.

In early 2015 defendants relocated to Georgia, but in August of that year went back to New Jersey to visit plaintiffs. They then absconded with the child, resulting in police involvement and legal proceedings. On August 18, 2015, a Family Part judge ordered that L.A.R. be placed in the physical custody of plaintiffs until further order of the court. Less than two weeks later D.R. was awarded temporary sole legal custody of L.A.R., and all parties were restrained from removing L.A.R. from New Jersey. Between 2015 and 2018, defendants

visited with L.A.R. under the auspices of several amended parenting time orders, while L.A.R. remained in the physical custody of plaintiffs.

In May 2019, after a plenary hearing, a judge temporarily suspended defendants' in-person parenting time conditioned upon counseling and family reunification therapy; the judge also ordered defendants to pay plaintiffs $50,000 in counsel fees. More recently, another judge heard and granted defendants' application for reunification and for the equal sharing of costs, but later, on plaintiffs' motion for reconsideration, required that defendants bear the cost of the therapy.

Defendants appeal the order granting reconsideration. Finding no abuse of discretion, but rather a valid and appropriate exercise of the court's equitable powers, we affirm.

I.

We summarize the relevant procedural history. In 2018, the presiding Family Part judge ordered defendants to show cause why a final order should not be issued requiring telephonic and Skype contact between defendants and the child to be in a therapeutic environment, limiting supervised visits to the Bergen Family Guidance Center, precluding the parties from discussing out-of-state travel with the child, prohibiting defendants from denigrating plaintiffs to

the child, and precluding defendants from interfering with the child's extracurricular activities. In May 2019, the presiding judge conducted the plenary hearing, made findings, and issued an order temporarily suspending all visitation, and also awarding counsel fees. Later, the judge reduced the award to a judgment enforceable in Georgia.

In June 2020, defendants moved before another Family Part judge, seeking restoration of supervised parenting time to be conducted with a professional therapist present. Defendants moved for therapy costs associated with parenting time to be equally shared between the parties. Plaintiffs opposed defendants' motion and filed a cross-motion, seeking to compel defendants to pay for therapy themselves. In the alternative, plaintiffs sought an order requiring defendants to pay plaintiffs' share of the therapeutic costs, and have that payment deducted from the $50,000 in counsel fees defendants owed to plaintiffs.

The judge granted defendants' motion to restore supervised parenting time conditioned on therapy. The judge rejected plaintiffs' cost arguments and ordered the parties to select a therapist and split the costs.

Plaintiffs filed a motion for reconsideration on the issue of therapy cost allocation, arguing again that they should not have to share those expenses with defendants. In granting reconsideration, the motion judge noted that he had

discretion to alter or amend a judgment. R. 4:49-2. The judge found that plaintiffs were caring for the child without any support payments from defendants, and he concluded that ordering plaintiffs to pay for reunification therapy would be inequitable. The motion judge granted reconsideration as well as ordered defendants to fully pay for reunification therapy services and credit plaintiffs' half of such cost towards the $50,000 judgment. Defendants appealed.

II.

"We review the Family Part judge's findings in accordance with a deferential standard of review, recognizing the court's 'special jurisdiction and expertise in family matters.'" Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998)). We interfere "[o]nly when the trial court's conclusions are so 'clearly mistaken' or 'wide of the mark' . . . to ensure that there is not a denial of justice." N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008) (quoting N.J. Div. of Youth & Fam. Servs. v. G.L., 191 N.J. 596, 605 (2007)). "Discretionary determinations, supported by the record, are examined to discern whether an abuse of reasoned discretion has occurred." Ricci v. Ricci, 448 N.J. Super. 546, 564 (App. Div. 2017) (citing Gac v. Gac, 186 N.J. 535, 547 (2006)). An abuse of discretion occurs when a trial court's decision "rested on an impermissible basis,

considered irrelevant or inappropriate factors, failed to consider controlling legal principles or made findings inconsistent with or unsupported by competent evidence." Elrom v. Elrom, 439 N.J. Super. 424, 434 (App. Div. 2015) (internal quotation marks and citations omitted). However, "we owe no deference to the [trial] judge's decision on an issue of law or the legal consequences that flow from established facts." Dever v. Howell, 456 N.J. Super. 300, 309 (App. Div. 2018) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

III.

Defendants first argue that the motion judge should not have reconsidered his order to split the cost of reunification therapy, and he abused his discretion when he did. Defendants next argue that once the judge reconsidered, he erred either as a matter of law or by abusing his discretion when he ordered defendants to pick up the plaintiffs' share of the therapy costs, effectively awarding plaintiffs a dollar-for-dollar credit for what defendants owe plaintiffs in counsel fees. We reject both arguments for the reasons set forth in the motion judge's statement of reasons given from the bench. We add these brief considerations.

We conclude the judge exercised reasonable discretion in granting reconsideration of his order of June 23, 2020. In that order, he directed the

parties to agree upon a reunification therapist within fourteen days. Rule 4:49-2 states in pertinent part:

> [A] motion for rehearing or reconsideration seeking to alter or amend a judgment or order shall . . . state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred . . . .
>
> [emphasis added].

Here, the motion judge articulated his basis for reconsideration, stating that he had overlooked the record created by the presiding judge when she issued her 2019 order awarding counsel fees. He found plaintiffs were not seeking to avoid paying their share of the therapy cost, but rather attempting to recoup the $50,000 counsel fee award imposed on defendants by the presiding judge.

Addressing the merits, the motion judge cited findings made by the presiding judge in her May 2019 order and accompanying statement of reasons, which related to defendants' combative conduct throughout the custody/parenting time dispute. The motion judge found that: defendants had acted in "bad faith;" that they had "displayed an oppositional defiance to . . . court orders, therapists' recommendations, [and] supervised visitation guidelines;" engaged in "harassing, demeaning, and erratic" behavior before the court; and that L.A.R. "did not want to visit with or communicate with

defendants." Based on the entire record, including defendants' unhelpful conduct, the motion judge concluded it would be inequitable to compel plaintiffs to expend an additional $1,750 to pay their share of the therapy costs when defendants owed them $50,000, and also found it equitable to impose the full therapy cost on defendants. We agree, and we find nothing in the record to conclude that the judge's findings were so "wide of the mark" as to conclude there was an abuse of discretion. E.P., 196 N.J. at 104.

Defendants argue the judge had no legal authority to impose such equitable relief. We disagree. The Family Part has the power to enforce its own orders. D'Angelo v. D'Angelo, 208 N.J. Super. 729, 731 (Ch. Div. 1986). The motion judge simply fashioned relief which facilitated enforcement of the prior counsel fees order, an order which is now reduced to judgment. Given our finding that the relief ordered is appropriate, we do not reach the issue of plaintiffs' future efforts to collect any outstanding judgment balance which may remain after therapy costs end.

To the extent we have not specifically addressed defendants' remaining contentions, we find they lack sufficient merit to warrant discussion in our written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION